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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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May 14, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Washington, DC 20554

**Re: In the Matter of
Reallocation and Service Rules for
the 698-746 MHz Spectrum Band
(Television Channels 52-59)
GN Docket No. 01-74 /**

Dear Ms. Salas:

Transmitted herewith on behalf of Television Capital Corporation of Richmond and Television Capital Corporation of Portland is an original and four copies of Comments, pursuant to the Notice of Proposed Rule Making, FCC 01-91, GN Docket No. 01-74, released March 28, 2001.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,



Vincent A Pepper
Mark Blacknell

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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To: The Commission)
In the Matter of)
) GN Docket No. 01-74
Reallocation and Service Rules for)
the 698-746 MHz Spectrum Band)
(Television Channels 52-59))

Comments of Television Capital Corporation of Richmond

and

Television Capital Corporation of Portland

I. Introduction

Television Capital Corporation of Richmond ("TCCR") and Television Capital Corporation of Portland ("TCCP" (and collectively as "TCC")) by counsel and pursuant to Section 1.415(b) of the Commission's Rules, hereby submits its comments in the above captioned rule making proceeding.¹ TCC files these comments in this proceeding, seeking to highlight the importance of many issues in the reallocation of spectrum pursuant to Title III of the Balanced Budget Act of 1997 ("BBA").²

TCC believes strongly that the rapid resolution of pending applications for NTSC channels in this spectrum is in the public interest, and that the Commission can easily facilitate such resolution by allowing pending applicants to specify operations on channels 52-59. In support thereof, the following is respectfully submitted:

¹ *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, Notice of Proposed Rule Making, FCC 01-91 (released March 28, 2001) ("NPRM").

² Pub. L. 105-33, 111 Stat. 251 (1997).

II. Pending NTSC Applicants Should Be Allowed to Specify Operation Within the Channels 52-58 Band

For over well over a decade, the Commission has been limiting the availability of new allocations for television broadcast stations, first by freezing new applications in certain markets, and then by reducing the spectrum available through reallocation proceedings.³ This has resulted in a very limited amount of spectrum available to those with pending NTSC applications that seek new or replacement channels. The Commission has previously noted the scarcity of replacement channels in other proceedings, noting that “it may be difficult, if not impossible, for many NTSC applicants and petitioners to find replacement channels.”⁴ TCCP and TCCR are well aware of this difficulty, as the converging spectrum demands of a reduced core spectrum and a doubled number of dedicated television channels has severely limited their available options.

Both TCCP and TCCR have pending settlement applications for new NTSC stations specifying channels within the 52-59 range, as filed under the provisions of the 1997 BBA. These applications were prepared and filed specifically in reliance on the availability of channels 52-59, which the Commission has now decided to reallocate for use by other services. However, the Commission has acknowledged that some stations may remain in the reallocated spectrum

³ See *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, RM-5811 (1987); *Sixth Report and Order*, 12 FCC Rcd 14588, ¶104, n. 173 (1997)(cutting off applications for new NTSC stations at September 20, 1996).

⁴ *Notice of Proposed Rule Making*, FCC 99-257, ¶37 (1999).

during the DTV transition period.⁵ Those parties with pending applications should be extended the same benefit.

TCCP has identified an available Portland channel between 52 and 58. Likewise, TCCR has determined that it can operate on channel 52 in Richmond. In both cases, TCCR and TCCP are confident in the availability of a suitable channel within the core once the DTV transition is completed, and intend to file the appropriate applications to move at that time.

Allowing such allocations will not frustrate the Commission's efforts to clear this spectrum for new uses in any meaningful way. In light of the significant number of DTV assignments in the lower 700 MHz band, it will be much more difficult to clear and far more difficult for new services to operate in this band prior to the end of the transition period.⁶ Therefore, as the Commission has recognized, "given the significant number of analog and DTV incumbents that already exist in this band[,]” the pending NTSC proposals will have only a marginal impact on the proposed new services and the Commission's ability to clear the channel 52-59 spectrum band prior to the end of the transition period.⁷

III. Parties Should Be Permitted to Amend Pending NTSC Proposals to Eliminate Conflicts with Mutually Exclusive Proposals and Make Other Minor Curative Amendments.

The Commission asked for comments on the nature of the policies it should implement in dealing with those applications already on file, which had relied on the availability of channels

⁵ See, e.g., NPRM at ¶7, note 25 (“NTSC incumbents and pending applications on Channels 52-59 include 89 licenses, 12 construction permits, and applications and allotment petitions for 57 new stations.”)

⁶ NPRM at ¶26.

⁷ NPRM at ¶24.

52-59. As noted, TCC is one of many parties who have a pending application for an analog channel allotment on file with the Commission.⁸

The Commission has recognized that those with pending applications for new NTSC stations have invested a significant amount of time, money and effort in their applications. The Commission also acknowledged its previous statements in other proceedings that it would not terminate the pending applications, but would later give applicants an opportunity to amend their proposals, if possible, to specify a channel below channel 60.⁹

Recognizing the difficulties caused by ongoing spectrum reallocation efforts, the Commission has previously provided NTSC applicants with an opportunity to modify their respective proposals to eliminate technical conflicts with DTV stations and move from channels 60-69 through the *Window Filing Notice*.¹⁰ Faced with a similar situation, the FCC should now create a filing window to provide parties like TCCP and TCCR with an opportunity to amend their proposals and attempt to resolve conflicts between mutually exclusive proposals made by pending applications.

In addition to this amendment opportunity, the FCC should permit those parties to submit minor curative amendments to their respective proposals that are now in conflict with a DTV, NTSC, or Class A application. Pending settlement applications, which have yet to identify a suitable channel, should likewise be able to consider designating a channel within this spectrum.

⁸See Construction Permit Applications (FCC File No. BPCT-19960920WI) and (FCC File No. BPCT-19960920WH).

⁹*NPRM* at ¶23, citing *Window Filing Notice*, 14 FCC Rcd 19559; *Second MO&O*, 14 FCC Rcd at 1367-68, 1369 ¶¶40-42, 45; *Upper 700 MHz Reallocation Order*, 12 FCC Rcd at 22971-72 ¶40.

¹⁰The amendment filing period opened on November 22, 1999, and closed on July 17, 2000. See *Public Notice*, 15 FCC Rcd 4974 (2000) (“Window Filing Period for Certain Pending Applications and Allotment Petitions for New Analog TV Stations Extended to July 15, 2000”).

IV. Allowing Such Amendments is Clearly in the Public Interest and in the Interest of Equity.

TCC's pending NTSC proposals bring substantial public interest benefits to their proposed service areas, including: (i) additional competition in the local advertising market; (ii) increased viewpoint diversity in the television market; and (iii) new opportunities for network affiliations for smaller networks such as The WB, UPN, and Paxnet (thus fostering competition among national networks). In light of these and other benefits, the Commission should permit TCCP, TCCR, and other similarly situated parties to file minor curative amendments to their pending NTSC proposals.

Furthermore, the Commission must recognize the seemingly unending process by which the pending applicants have arrived at this point. Without chronicling the recent history of television broadcast station applications, it should suffice to say that the applicants have in good faith consistently relied on the Commission's assurances that the latest reallocation scheme would not deprive them of the NTSC allocations for which they have properly filed.¹¹ Relying on those assurances, applicants have spent significant amounts of time and resources to identify suitable channels and allotments, only to have that work rendered useless as the Commission designates those channels for yet further reallocation. TCC does not challenge the importance of these reallocation efforts-- in fact, TCC supports them-- but it asks that the Commission not continue these efforts with a process that ignores the years of efforts that applicants such as itself have undertaken, in good faith reliance on the assurances of the Commission that a suitable NTSC allocation would be attainable.

¹¹ See, e.g., note 3, *supra*.

V. The Commission Must Continue to Process Pending Applications

A. The Mass Media Bureau Should Not Arbitrarily Deny Grant of Applications

As noted above, the Commission has acknowledged in previous statements that “it would not summarily terminate the pending applications and rulemaking petitions” for new NTSC stations, but would, “at a later date, provide the applicants and petitioners an opportunity to amend their applications and petitions, if possible, to a channel below Channel 60.”¹² The Commission noted, however, that continuing to process these applications could result in greater incumbency on the lower 700 MHz band, “which may make new service operations more difficult.”¹³ In spite of this anticipated difficulty, the Commission stated that “for the pendency of this rulemaking proceeding, we direct the Mass Media Bureau to suspend processing of applications and channel allotment petitions for new analog stations on Channel 59, but to allow limited amendments to specify another channel, if available.”¹⁴

The FCC’s Mass Media Bureau (the “Bureau”) staff have informally advised TCC’s counsel that, although they will continue to “process” pending NTSC proposals for Channels 52-58 during this rulemaking proceeding, they will not grant these proposals until this proceeding has concluded. The Bureau’s interpretation of the NPRM is plainly inconsistent with the full Commission’s express directive in the NPRM concerning Channel 52-58 proposals. If the Commission did not intend for the Bureau to process and grant pending NTSC proposals for Channels 52-58 during the pendency of this rulemaking proceeding, the Commission should have so stated in the NPRM. Therefore, TCC respectfully submits that, in accordance with the

¹² NPRM at ¶23.

¹³ NPRM at ¶24.

¹⁴ Id.

express language in the NPRM, the full Commission should immediately direct the Bureau to not only process, but grant, the pending NTSC proposals for Channels 52-58.

B. The Commission Should Process Pending Applications on an Expedited Basis

Pending applications specifying a channel between 52-58 should be granted as soon as practically possible, as many have been languishing on the Bureau docket for years. The original NTSC proposals were all filed in 1996, making it nearly five years that the proposals have been pending before the Commission in one form or another.¹⁵ These NTSC proposals have had to await the conclusion of the DTV proceeding, the enactment and implementation of the Community Broadcasters Protection Act, and are now subject to the instant rulemaking proceeding.

As a result of the lengthy delay in the processing of these proposals, there now are only slightly more than five and one-half years before the scheduled end of the transition period. In light of the substantial period of time in which these proposals have been pending before the FCC, the Commission should make every effort to accelerate the processing of these pending NTSC proposals so that the proposed new NTSC stations can operate for a meaningful period of time before the scheduled end of the transition period. The Commission now has an obligation to act quickly, given its repeated statements that it would seek to accommodate pending applications and rulemaking petitions for new NTSC stations.¹⁶

¹⁵ See *Sixth Further Notice*, 11 FCC Rcd at 10992-93.

¹⁶ See, e.g., *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, FCC 99-257, para 41 (1998). See also *Reallocation of Television Channels 60-69, the 746-806 MHz Band, Report and Order*, 12 FCC Rcd 22953 (1998); *Public Notice*, DA 99-2605 (released November 22, 1999) (“Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations”).

In sum, the Commission should continue to process pending settlement applications on an expedited basis. Applications that involve a settlement proposal are not subject to the further delay associated with additional competing applications. Thus, the FCC could act almost immediately on the pending settlement proposals, after the applicants have been given an opportunity to make the amendments specified above. The result would be no further delay in bringing additional broadcast service, and all of its associated public benefits, to communities around the country.

VI. Transition Requirements

The Commission further requested comments on whether it should require successful applicants (who are currently pending) to transition to available frequencies below 698 MHz by a particular date in order to clear the spectrum of incumbent users. TCC believes that when the transition to DTV is complete, there will be significant amounts of spectrum available within the core, and those occupying channels 52-58 should have no problem identifying a suitable channel on which to continue their operations. At the end of the transition period, these applicants should be allowed to seek a replacement channel inside the core spectrum. Thus, the Commission can both provide broadcast service to communities while being assured that the applicants will clear the spectrum at a date certain.

VII. Conclusion

Both TCCR and TCCP understand and support the Commission's efforts to meet its public interest obligation to manage valuable spectrum in an effort to deliver new and important services to the public. However, the Commission has an obligation to undertake its duties in a fair and equitable manner. By granting applicants outside of the core an opportunity to operate on channels 52-58 until the end of the DTV transition period, the Commission will be meeting

the goals of added competition, expanded diversity, and improved broadcast service in smaller markets while not impeding the progress of the DTV transition or delivery of new wireless services in any way.

Respectfully submitted,

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May 14, 2001

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